

No. 2001-03

Date: December 11, 2001

Foreign Corrupt Practices Act Review  
Opinion Procedure Release

The Department has received a request from a U.S. company whose wholly-owned subsidiary has, with the assistance of a foreign dealer, submitted a bid to a foreign government for the sale of equipment to the government. Following submission of the bid, the dealer's president and principal owner ("dealer's owner") made comments to an employee of the requestor that the employee understood to mean that payments had been made or would be made by the dealer's owner to government officials so that the requestor's bid would be accepted. The requestor's agreement with the dealer has expired and, should the requestor's bid be accepted, it would like to enter into a new agreement with the dealer. Pursuant to this proposed Dealer Agreement, the dealer would be responsible for the provision of services in connection with the equipment sale.

With respect to the bid and the proposed new Dealer Agreement, the requestor has made the following representations.

1. The requestor, through its counsel, has investigated the comments of the dealer's owner and found no information substantiating the implication of the comments, i.e., that the dealer made payments or promises of payments to a government official so that the requestor's bid would be accepted.
2. The dealer's owner has represented to the requestor that no payments were made or promised to officials of the foreign government in connection with the equipment sale.
3. The dealer would certify in the proposed Dealer Agreement that no payments to government officials in connection with the requestor's business were made or will be made and that if such payments are made, the requestor may terminate the Dealer Agreement and withhold any payments otherwise owed to the dealer under the agreement.
4. The proposed Dealer Agreement would provide that the requestor may annually audit the books and records of the dealer to ensure the dealer's compliance with the representations and warranties contained in the Dealer Agreement, including the dealer's representations and warranties with respect to the FCPA. The requestor has represented to the Department that it will fully exercise this right.
5. The requestor will timely notify the Department if it becomes aware of any information that substantiates the allegation that a payment was made or promised to an official of the foreign government in connection with the requestor's bid.

In addition, the dealer's owner has represented directly to the Department that neither the dealer's owner nor anyone acting on behalf of the dealer has made payments or promised to make payments, or will make payments or promise to make payments, to officials of the foreign government in connection with the equipment sale.

Based on all the facts and circumstances, as represented by the requestor and the dealer's owner, the Department does not presently intend to take any enforcement action with respect to the Dealer Agreement between the requestor and the dealer.

This FCPA Opinion Release has no application to any party which did not join in the request, and can be relied upon by the requesting party only to the extent that the disclosure of facts and circumstances in the request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.